

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

Civil Action No. 09-11253-RGS

DANIEL CARDARELLI,

Plaintiff

v.

MBTA, et al.,

Defendants

DEFENDANTS ROBERT POWERS AND
PAUL BYRNE'S ANSWER
AND JURY DEMAND

1. The defendants are without sufficient information to either admit or deny the allegations contained in Paragraph 1.
2. The defendants are without sufficient information to either admit or deny the allegations contained in Paragraph 2.
3. The defendants are without sufficient information to either admit or deny the allegations contained in Paragraph 3.
4. The defendants are without sufficient information to either admit or deny the allegations contained in Paragraph 4.
5. The defendants are without sufficient information to either admit or deny the allegations contained in Paragraph 5.
6. The defendants are without sufficient information to either admit or deny the allegations contained in Paragraph 6.
7. The defendants are without sufficient information to either admit or deny the

allegations contained in Paragraph 7.

8. The defendants are without sufficient information to either admit or deny the allegations contained in Paragraph 8.
9. The defendants are without sufficient information to either admit or deny the allegations contained in Paragraph 9.
10. The defendants are without sufficient information to either admit or deny the allegations contained in Paragraph 10.
11. The defendants admit the allegations contained in Paragraph 11.
12. The defendants admit the allegations contained in Paragraph 12.
13. The defendants are without sufficient information to either admit or deny the allegations contained in Paragraph 13.
14. The defendants are without sufficient information to either admit or deny the allegations contained in Paragraph 14.

Jurisdiction

- 15.-17. The defendants neither admit nor deny the allegations contained in Paragraph 15 as they are a statement of jurisdiction.

Facts

18. The defendants repeat and reassert their responses as stated in Paragraphs 1 through 17.
19. The defendants are without sufficient information to either admit or deny the allegations contained in Paragraph 19.
20. The defendants are without sufficient information to either admit or deny the allegations contained in Paragraph 20.

21. The defendants are without sufficient information to either admit or deny the allegations contained in Paragraph 21.
22. The defendants are without sufficient information to either admit or deny the allegations contained in Paragraph 22.
23. The defendants are without sufficient information to either admit or deny the allegations contained in Paragraph 23.
24. The defendants are without sufficient information to either admit or deny the allegations contained in Paragraph 24.
25. The defendants are without sufficient information to either admit or deny the allegations contained in Paragraph 25.
26. The defendants are without sufficient information to either admit or deny the allegations contained in Paragraph 26.
27. The defendants are without sufficient information to either admit or deny the allegations contained in Paragraph 27.
28. The defendants are without sufficient information to either admit or deny the allegations contained in Paragraph 28.
29. The defendants are without sufficient information to either admit or deny the allegations contained in Paragraph 29.
30. The defendants are without sufficient information to either admit or deny the allegations contained in Paragraph 30.
31. The defendants are without sufficient information to either admit or deny the allegations contained in Paragraph 31.
32. The defendants are without sufficient information to either admit or deny the

allegations contained in Paragraph 32.

33. The defendants are without sufficient information to either admit or deny the allegations contained in Paragraph 33.

34. The defendants are without sufficient information to either admit or deny the allegations contained in Paragraph 34.

35. The defendants are without sufficient information to either admit or deny the allegations contained in Paragraph 35.

36. The defendants are without sufficient information to either admit or deny the allegations contained in Paragraph 36.

37. The defendants are without sufficient information to either admit or deny the allegations contained in Paragraph 37.

38. The defendants are without sufficient information to either admit or deny the allegations contained in Paragraph 38.

39. The defendants are without sufficient information to either admit or deny the allegations contained in Paragraph 39.

40. The defendants are without sufficient information to either admit or deny the allegations contained in Paragraph 40.

41. The defendants are without sufficient information to either admit or deny the allegations contained in Paragraph 41.

42. The defendants are without sufficient information to either admit or deny the allegations contained in Paragraph 42.

43. The defendants are without sufficient information to either admit or deny the allegations contained in Paragraph 43.

44. The defendants are without sufficient information to either admit or deny the allegations contained in Paragraph 44.
45. The defendants are without sufficient information to either admit or deny the allegations contained in Paragraph 45.
46. The defendants are without sufficient information to either admit or deny the allegations contained in Paragraph 46.
47. The defendants are without sufficient information to either admit or deny the allegations contained in Paragraph 47.
48. The defendants are without sufficient information to either admit or deny the allegations contained in Paragraph 48.
49. The defendants are without sufficient information to either admit or deny the allegations contained in Paragraph 49.
50. The defendants are without sufficient information to either admit or deny the allegations contained in Paragraph 50.
51. The defendants are without sufficient information to either admit or deny the allegations contained in Paragraph 51.
52. The defendants are without sufficient information to either admit or deny the allegations contained in Paragraph 52.
53. The defendants are without sufficient information to either admit or deny the allegations contained in Paragraph 53.
54. The defendants are without sufficient information to either admit or deny the allegations contained in Paragraph 54.
55. The defendants are without sufficient information to either admit or deny the

allegations contained in Paragraph 55.

56. The defendants are without sufficient information to either admit or deny the allegations contained in Paragraph 56.

57. The defendants are without sufficient information to either admit or deny the allegations contained in Paragraph 57.

58. The defendants are without sufficient information to either admit or deny the allegations contained in Paragraph 58.

59. The defendants are without sufficient information to either admit or deny the allegations contained in Paragraph 59.

60. The defendants are without sufficient information to either admit or deny the allegations contained in Paragraph 60.

61. The defendants are without sufficient information to either admit or deny the allegations contained in Paragraph 61.

62. The defendants are without sufficient information to either admit or deny the allegations contained in Paragraph 62.

63. The defendants are without sufficient information to either admit or deny the allegations contained in Paragraph 63.

64. The defendants are without sufficient information to either admit or deny the allegations contained in Paragraph 64.

65. The defendants are without sufficient information to either admit or deny the allegations contained in Paragraph 65.

66. The defendants are without sufficient information to either admit or deny the allegations contained in Paragraph 66.

67. The defendants are without sufficient information to either admit or deny the allegations contained in Paragraph 67.
68. The defendants are without sufficient information to either admit or deny the allegations contained in Paragraph 68.
69. The defendants are without sufficient information to either admit or deny the allegations contained in Paragraph 69.
70. The defendants are without sufficient information to either admit or deny the allegations contained in Paragraph 70.
71. The defendants are without sufficient information to either admit or deny the allegations contained in Paragraph 71.
72. The defendants are without sufficient information to either admit or deny the allegations contained in Paragraph 72.
73. The defendants are without sufficient information to either admit or deny the allegations contained in Paragraph 73.
74. The defendants are without sufficient information to either admit or deny the allegations contained in Paragraph 74.
75. The defendants deny the allegations contained in Paragraph 75.
76. The defendants admit that the defendant, Powers, attended a meeting with the plaintiff. The defendants deny the remaining allegations contained in Paragraph 76.
77. The defendants are without sufficient information to either admit or deny the allegations contained in Paragraph 77.
78. The defendants admit that the defendant Powers had a conversation with Sprague,

Flanagan and Martino. The defendants deny the remaining allegations contained in Paragraph 78.

79. The defendants admit that the defendant, Powers, informed Cardarelli that he was being ordered to undergo a psychiatric evaluation at the direction of Chief Carter. The defendants deny the remaining allegations contained in Paragraph 79.

80. The defendants are without sufficient information to either admit or deny the allegations contained in Paragraph 80.

81. The defendants are without sufficient information to either admit or deny the allegations contained in Paragraph 81.

82. The defendants are without sufficient information to either admit or deny the allegations contained in Paragraph 82.

83. The defendants deny the allegations contained in paragraph 83.

84. The defendants are without sufficient information to either admit or deny the allegations contained in Paragraph 84.

85. The defendants admit that the plaintiff was a dues paying member of the union and treated him consistently with the Union policies and practices.

86. The defendants deny the allegations contained in paragraph 86.

87. The defendants are without sufficient information to either admit or deny the allegations contained in Paragraph 87.

88. The defendants deny the allegations contained in paragraph 88

Additional Harassment

89. The defendants are without sufficient information to either admit or deny the allegations contained in Paragraph 89.

90. The defendants are without sufficient information to either admit or deny the allegations contained in Paragraph 90
91. .The defendants are without sufficient information to either admit or deny the allegations contained in Paragraph 91.
92. The defendants are without sufficient information to either admit or deny the allegations contained in Paragraph 92.
93. The defendants admit that the defendant, Byrne, was president of the union in 2002. Further, the defendants are without sufficient information to either admit or deny the remaining allegations contained in Paragraph 93.
94. The defendants are without sufficient information to either admit or deny the allegations contained in Paragraph 94
95. .The defendants are without sufficient information to either admit or deny the allegations contained in Paragraph 95.
96. The defendants are without sufficient information to either admit or deny the allegations contained in Paragraph 96.
97. The defendants are without sufficient information to either admit or deny the allegations contained in Paragraph 97
98. .The defendants are without sufficient information to either admit or deny the allegations contained in Paragraph 98
99. .The defendants are without sufficient information to either admit or deny the allegations contained in Paragraph 99.
100. The defendants are without sufficient information to either admit or deny the allegations contained in Paragraph 100.

101. The defendants are without sufficient information to either admit or deny the allegations contained in Paragraph 101.

102. The defendants are without sufficient information to either admit or deny the allegations contained in Paragraph 102.

103. The defendants are without sufficient information to either admit or deny the allegations contained in Paragraph 103.

104. The defendants are without sufficient information to either admit or deny the allegations contained in Paragraph 104.

105. The defendants are without sufficient information to either admit or deny the allegations contained in Paragraph 105.

106. The defendants are without sufficient information to either admit or deny the allegations contained in Paragraph 106.

107. The defendants are without sufficient information to either admit or deny the allegations contained in Paragraph 107.

108. The defendants are without sufficient information to either admit or deny the allegations contained in Paragraph 108.

2005 Internal Affairs Investigation/Second Psych Evaluation

109. The defendants are without sufficient information to either admit or deny the allegations contained in Paragraph 109.

110. The defendants are without sufficient information to either admit or deny the allegations contained in Paragraph 110.

111. The defendants are without sufficient information to either admit or deny the allegations contained in Paragraph 111.

112. The defendants are without sufficient information to either admit or deny the allegations contained in Paragraph 112.
113. The defendants are without sufficient information to either admit or deny the allegations contained in Paragraph 113.
114. The defendants are without sufficient information to either admit or deny the allegations contained in Paragraph 114.
115. The defendants are without sufficient information to either admit or deny the allegations contained in Paragraph 115.
116. The defendants are without sufficient information to either admit or deny the allegations contained in Paragraph 116.
117. The defendants are without sufficient information to either admit or deny the allegations contained in Paragraph 117.
118. The defendants are without sufficient information to either admit or deny the allegations contained in Paragraph 118.
119. The defendants are without sufficient information to either admit or deny the allegations contained in Paragraph 119.
120. The defendants are without sufficient information to either admit or deny the allegations contained in Paragraph 120.
121. The defendants are without sufficient information to either admit or deny the allegations contained in Paragraph 121.
122. The defendants are without sufficient information to either admit or deny the allegations contained in Paragraph 122.
123. The defendants are without sufficient information to either admit or deny the

allegations contained in Paragraph 123.

124. The defendants are without sufficient information to either admit or deny the allegations contained in Paragraph 124.

125. The defendants are without sufficient information to either admit or deny the allegations contained in Paragraph 125.

126. The defendants are without sufficient information to either admit or deny the allegations contained in Paragraph 126.

127. The defendants are without sufficient information to either admit or deny the allegations contained in Paragraph 127.

128. The defendants are without sufficient information to either admit or deny the allegations contained in Paragraph 128.

129. The defendants are without sufficient information to either admit or deny the allegations contained in Paragraph 129.

130. The defendants are without sufficient information to either admit or deny the allegations contained in Paragraph 130.

131. The defendants are without sufficient information to either admit or deny the allegations contained in Paragraph 131.

132. The defendants are without sufficient information to either admit or deny the allegations contained in Paragraph 132.

133. The defendants are without sufficient information to either admit or deny the allegations contained in Paragraph 133.

Further Harassment at Rollcalls

134. The defendants are without sufficient information to either admit or deny the

allegations contained in Paragraph 134.

135. The defendants are without sufficient information to either admit or deny the allegations contained in Paragraph 135.

136. The defendants are without sufficient information to either admit or deny the allegations contained in Paragraph 136.

137. The defendants are without sufficient information to either admit or deny the allegations contained in Paragraph 137.

138. The defendants are without sufficient information to either admit or deny the allegations contained in Paragraph 138.

139. The defendants are without sufficient information to either admit or deny the allegations contained in Paragraph 139.

140. The defendants are without sufficient information to either admit or deny the allegations contained in Paragraph 140.

141. The defendants are without sufficient information to either admit or deny the allegations contained in Paragraph 141.

142. The defendants are without sufficient information to either admit or deny the allegations contained in Paragraph 142.

143. The defendants are without sufficient information to either admit or deny the allegations contained in Paragraph 143.

144. The defendants are without sufficient information to either admit or deny the allegations contained in Paragraph 144.

Count I
Defendant MBTA Only
Whistleblower Statute Violation

145-149 The defendants are without sufficient information to either admit or deny the allegations contained in Paragraphs 145-149 as same are not directed to them.

Count II
All Defendants
42 U.S.C. § 1983

150. The defendants repeat and reassert their responses as stated in Paragraphs 1 through 150.

151. The defendants neither admit nor deny the allegations contained in Paragraph 151 as it seeks a legal conclusion.

152. The defendants deny the allegations contained in Paragraph 152.

153. The defendants deny the allegations contained in Paragraph 153.

154. The defendants deny the allegations contained in Paragraph 154.

155. The defendants deny the allegations contained in Paragraph 155.

156. The defendants deny the allegations contained in Paragraph 156.

Wherefore, the defendants demand judgment in their favor.

Count III
All Defendants Except the MBTA Violation of Chapter 12, § 11I

157. The defendants repeat and reassert their responses as stated in Paragraphs 1 through 156.

158. The defendants deny the allegations contained in Paragraph 158.

159. The defendants deny the allegations contained in Paragraph 159.

160. The defendants deny the allegations contained in Paragraph 160.

161. The defendants deny the allegations contained in Paragraph 161.

162. The defendants deny the allegations contained in Paragraph 162.

Wherefore, the defendants demand judgment in their favor.

Count IV
All Defendants Except MBTA
Negligent Infliction of Emotional Distress

163. The defendants repeat and reassert their responses as stated in Paragraphs 1 through 162.

164. The defendants deny the allegations contained in Paragraph 164.

165. The defendants deny the allegations contained in Paragraph 165.

166. The defendants deny the allegations contained in Paragraph 166.

Wherefore, the defendants demand judgment in their favor.

Count V
All Defendants Except MBTA
Intentional Infliction of Emotional Distress

167. The defendants repeat and reassert their responses as stated in Paragraphs 1 through 166.

168. The defendants deny the allegations contained in Paragraph 168.

169. The defendants deny the allegations contained in Paragraph 169.

170. The defendants deny the allegations contained in Paragraph 170.

171. The defendants deny the allegations contained in Paragraph 171.

Wherefore, the defendants demand judgment in their favor.

Count VI
All Defendants
Defamation of Character

172. The defendants repeat and reassert their responses as stated in Paragraphs 1 through 171.

173. The defendants deny the allegations contained in Paragraph 173.

174. The defendants deny the allegations contained in Paragraph 174.

175. The defendants deny the allegations contained in Paragraph 175.

176. The defendants deny the allegations contained in Paragraph 176.

Wherefore, the defendants demand judgment in their favor.

Count VII
Slander/Libel

177. The defendants repeat and reassert their responses as stated in Paragraphs 1 through 176.

178. The defendants deny the allegations contained in Paragraph 178.

179. The defendants deny the allegations contained in Paragraph 179.

180. The defendants deny the allegations contained in Paragraph 180.

181. The defendants deny the allegations contained in Paragraph 181.

182. The defendants deny the allegations contained in Paragraph 182

Wherefore, the defendants demand judgment in their favor.

Count VII [sic]
All Defendants
Civil Conspiracy

183. The defendants repeat and reassert their responses as stated in Paragraphs 1 through 182.

184. The defendants deny the allegations contained in Paragraph 184.

185. The defendants deny the allegations contained in Paragraph 185.

186. The defendants deny the allegations contained in Paragraph 186.

187. The defendants deny the allegations contained in Paragraph 187.

188. The defendants deny the allegations contained in Paragraph 188.

Wherefore, the defendants demand judgment in their favor.

Count VIII
Defendant Joseph Carter

189.-215. The defendants neither admit nor deny the allegations contained in Paragraphs 189-215 as they were not directed to them.

Count IX
Defendant Thomas O'Laughlin

216-242. The defendants neither admit nor deny the allegations contained in Paragraphs 216-242 as they were not directed to them.

Count X
Defendant John Martino

243.-269. The defendants neither admit nor deny the allegations contained in Paragraphs 243-269 as they were not directed to them.

Count XI
Defendant Dolores Ford Murphy

270.-296. The defendants neither admit nor deny the allegations contained in Paragraphs 270-296 as they were not directed to them.

Count XII
Defendant Thomas Kamola

297.-323. The defendants neither admit nor deny the allegations contained in Paragraphs

297-323 as they were not directed to them.

Count XIII
Defendant Ann McCall

324.-350. The defendants neither admit nor deny the allegations contained in Paragraphs

324-350 as they were not directed to them.

Count XIII
Defendant Kenneth Sprague

351.-377. The defendants neither admit nor deny the allegations contained in Paragraphs

351-377 as they were not directed to them.

Count XV
Defendant Pasciucco

378.-404. The defendants neither admit nor deny the allegations contained in Paragraphs 378-404 as they were not directed to them.

Count XVI
Defendant Robert Powers

405. The defendants repeat and reassert their responses as if stated herein Paragraphs 1 through 404.

406. The defendants admit the allegations contained in Paragraph 406.

407. The defendants deny that the defendant Powers hold the rank of a police officer.
The defendant admits the remaining allegations contained in Paragraph 407.

408. The defendants deny the allegations contained in Paragraph 408.

409. The defendants deny the allegations contained in Paragraph 409.

410. The defendants deny the allegations contained in Paragraph 410.

411. The defendants deny the allegations contained in Paragraph 411.

- 412. The defendants deny the allegations contained in Paragraph 412.
- 413. The defendants deny the allegations contained in Paragraph 413.
- 414. The defendants deny the allegations contained in Paragraph 414.
- 415. The defendants deny the allegations contained in Paragraph 415.
- 416. The defendants deny the allegations contained in Paragraph 416.
- 417. The defendants deny the allegations contained in Paragraph 417.
- 418. The defendants deny the allegations contained in Paragraph 418.
- 419. The defendants deny the allegations contained in Paragraph 419.
- 420. The defendants deny the allegations contained in Paragraph 420.
- 421. The defendants deny the allegations contained in Paragraph 421.
- 422. The defendants deny the allegations contained in Paragraph 422.
- 423. The defendants deny the allegations contained in Paragraph 423.
- 424. The defendants deny the allegations contained in Paragraph 424.
- 425. The defendants deny the allegations contained in Paragraph 425.
- 426. The defendants deny the allegations contained in Paragraph 426.
- 427. The defendants deny the allegations contained in Paragraph 427.
- 428. The defendants deny the allegations contained in Paragraph 428.
- 429. The defendants deny the allegations contained in Paragraph 429.
- 430. The defendants deny the allegations contained in Paragraph 430.
- 431. The defendants deny the allegations contained in Paragraph 431.

Wherefore the defendants demand judgment in their favor.

DEMAND FOR JURY TRIAL

The defendant requests a trial by jury on all counts.

AFFIRMATIVE DEFENSES

First

The plaintiff has failed to state a claim for which relief may be granted.

Second

Any damages or injuries that the plaintiff may have suffered were caused by a person or persons for whose conduct the defendant is not legally responsible.

Third

Any damages or injuries that the plaintiff may have suffered was caused by his own negligence, and therefore any damages that the plaintiff may recover must be reduced in proportion to such negligence pursuant to G.L. Ch. 231, section 85.

Fourth

The plaintiff was comparatively negligent and such negligence exceeded the amount of any negligence of the defendant and therefore plaintiff is barred from recovery pursuant to G.L. Ch. 231, section 85.

Fifth

The individual defendant acted objectively reasonably under the circumstances and is qualifiedly immune from liability.

Sixth

The plaintiff has failed to commence suit within the applicable period of time permitted by statute.

Defendants, By their Attorney,

/s/Regina M. Ryan

Regina M. Ryan BBO# 565246

Louison, Costello, Condon & Pfaff, LLP
67 Batterymarch Street
Boston, MA 02110
(617) 439-0305

CERTIFICATE OF SERVICE

I, Regina M. Ryan., hereby certify that on the 9th day of October, 2009, I served the foregoing by causing a copy to be electronically forwarded to: Michael D. Rubeinstein, Esq., 1725 Revere Beach Parkway, Everett, MA 02149.

/s/Regina M. Ryan

Regina M. Ryan